

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ANDREA CALLEGATI,

Plaintiff,

V.

CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,

Defendant.

CASE NO. 2:16-cv-00669 JLR JRC

REPORT AND RECOMMENDATION TO DISMISS FOR LACK OF PROSECUTION

NOTED: NOVEMBER 18, 2016

This matter has been referred to United States Magistrate Judge J. Richard Creature

pursuant to 28 U.S.C. § 636(b)(1) and Local Magistrate Judge Rule MJR 4(a)(4), and as

authorized by Mathews, *Secretary of H.E.W. v. Weber*, 423 U.S. 261, 271-72 (1976). This

matter is before the Court on this Court's Order to Show Cause why this matter should not be

dismissed (see Dkt. 15) for failure to follow the Court's Scheduling Order (Dkt. 12) and file an

opening brief.

This C

This Court issued an Order to Show Cause (Dkt. 15) on October 5, 2018, ordering

plaintiff to show cause by October 21, 2016 why this matter should not be dismissed for lack of

prosecution. Plaintiff has failed to file anything in response to this Court's Order. For this reason,

1 and because there is no evidence in the record that an opening brief or motion to amend the
2 scheduling order has been filed, this Court recommends that this action be dismissed without
3 prejudice.

4 BACKGROUND

5 Plaintiff attached his complaint to his motion for leave to proceed *In Forma Pauperis* on
6 May 9, 2016 (Dkts. 1, 4), and because plaintiff is *pro se* and was granted *in forma pauperis*
7 status (Dkt. 3), an Order directing the clerk's office to serve the summons and complaint entered
8 on May 13, 2016 (Dkt. 5) Defendant filed the Answer/Administration Record on July 12, 2016
9 (Dkt. 11) and the Court issued the Scheduling Order on July 13, 2016 (Dkt. 12). Plaintiff called
10 the clerk's office on August 11, 2016 to inform the Court that he (plaintiff) had obtained counsel,
11 but would not be able to file his opening brief on time. He was instructed to either put something
12 in writing for the Court or have his attorney file a notice of appearance (see note on docket).
13 Since that date, there have been no filings on behalf of plaintiff in the case. On October 5, 2016,
14 the Court ordered plaintiff to show cause why this matter should not be dismissed for lack of
15 prosecution (Dkt. 15).

16 DISCUSSION

17 Plaintiff was given eight weeks to provide the Court with an attorney appearance or his
18 opening brief before the Court filed the Order to Show Cause. Plaintiff was informed that
19 pursuant to Fed. R. Civ. P. 4(m), the Court was providing notice to plaintiff and the opportunity
20 to show cause why this Court should not file a Report and Recommendation to dismiss this
21 action for lack of prosecution (see Dkt. 15, p. 1). The Court was not willing to risk dismissal of
22 an action before consideration of the merits when "other less drastic alternatives [we]re []
23 available," in part, due to plaintiff's *pro se* status. *See Eldridge v. Block*, 832 F.2d 1132, 1137
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1 (9th Cir. 1987) (*citing Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 674 (1981)). The Court
2 provided notice to plaintiff that this matter would be dismissed for lack of prosecution if plaintiff
3 failed to show good cause for the delay by October 21, 2016 (*see Dkt 15, p. 2*). Plaintiff has not
4 filed anything since the Court's Order to Show Cause (*see id.*). *See Fed. R. Civ. P. 4(m)*.

5 CONCLUSION

6 As plaintiff failed to abide by this Court's order and show cause why this matter should
7 not be dismissed, the undersigned recommends that this matter be dismissed for lack of
8 prosecution and that the case be closed.

9 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
10 fourteen (14) days from service of this Report to file written objections. *See also Fed. R. Civ. P.*
11 6. Failure to file objections will result in a waiver of those objections for purposes of *de novo*
12 review by the district judge. *See 28 U.S.C. § 636(b)(1)(C)*. Accommodating the time limit
13 imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **November 18,**
14 **2016**, as noted in the caption.

15 Dated this 25th day of October, 2016.

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18 J. Richard Creatura
19 United States Magistrate Judge
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